

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 05-14760
Non-Argument Calendar

FILED U. S. COURT OF APPEALS ELEVENTH CIRCUIT January 31, 2006 THOMAS K. KAHN CLERK
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D. C. Docket No. 05-00410-CV-CAM-1

BRUNSWICK BOWLING & BILLIARDS
CORPORATION, LEISERV, INC.,

Plaintiffs-Appellants,

versus

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,
ILLINOIS NATIONAL INSURANCE
COMPANY,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(January 31, 2006)

Before CARNES, PRYOR and FAY, Circuit Judges.

PER CURIAM:

This appeal challenges the dismissal of a complaint filed by appellant against multiple defendants. Although the district court granted relief to other defendants, the sole issue before us is the granting of a motion to dismiss in favor of the defendant Illinois National Insurance Company. See footnote 10 of Appellant's Brief.

In ruling on the motion to dismiss in question it does appear that the district court relied upon documents that were outside the allegations of the complaint. Since it now appears that much of the dispute over coverage involves another legal action in Missouri and a similar facsimile advertisement that was circulated in Missouri (this suit deals with activity in the area of Atlanta, Georgia), we conclude that the matter should be handled under Rule 56 as a motion for summary judgment and not under Rule 12(b)(6). This will require the giving of a ten day notice along with the other procedures involved.

The order of dismissal as to the Illinois National Insurance Company is vacated and the matter remanded to the district court.

VACATED and REMANDED.